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No. 162

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1963

LEON AVERITT AND
PERCY DONALD LIVINGSTON — Petitioners

vs.

THE STATE OF MISSISSIPPI — Respondent

FROM THE SUPREME COURT OF MISSISSIPPI

PETITION FOR RE-HEARING

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MAY IT PLEASE THE COURT:

Now come Petitioners, Leon Averitt and Percy Donald Livingston, and Petition this Honorable Court for a Re-Hearing of their Petition for Certiorari, and in support thereof respectfully urge:

APPEAL DISMISSED AND PETITION DENIED

Heretofore, on October 14, 1963, an order was here entered dismissing the Appeal of Petitioners and upon consideration of matters presented as a Petition for Writ of Certiorari said Petition was denied.

JURISDICTION APPLICABLE ON SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTION

Reference is made to *Jurisdictional Statement* herein filed, particularly Page 5 thereof, showing, with deference, a Substantial Federal Constitutional Question presented for determination under the law announced in:

Sherman vs. United States, 356 U.S. 369; 2 L. Ed. (2d) 848; 78 Sup. Ct. 819.

Bush vs. Texas, ——U.S.——; 9 L. Ed. (2d) 958.

Lynumn vs. Illinois, ——U.S.——; 9 L. Ed. (2d) 922.

Draper vs. Washington, ——U.S.——; 9 L. Ed. (2d) 899.

Douglas vs. California, ——U.S.——; 9 L. Ed. (2d) 811.

Carnley vs. Cochran, 369 U.S. 506; 8 L. Ed. (2d) 70; 82 Sup. Ct. 884.

Compare:

Lang vs. State, 230 Miss. 147; 92 So. (2d) 670.

Strait vs. State, 77 Miss. 695; 27 So. 618.

Mapp vs. Ohio, 367 U.S. 643; 6 L. Ed. (2d) 1081.

DUE PROCESS AND EQUAL PROTECTION WERE DENIED BY STATE COURTS

We submit, with deference, that there was substantial denial of due process and equal protection to these Petitioners in the State Courts in this that:

1. Continuance for obtaining absent material witness from Pennsylvania for trial should have been granted.

2. New trial on face of record was appropriate under the facts of entrapment shown and affidavit of

absent witness, Jasper Lanier Meeks, who can and will be available to testify on such new trial.

3. Conviction rested on absolute showing of entrapment and lack of criminal intent of Petitioners to commit any crime under the facts and circumstances, thereby requiring dismissal and discharge, or granting of the new trial requested.

We urge, therefore, re-hearing and reconsideration with granting of Petition for Certiorari upon the whole record.

WHEREFORE, Petitioners pray for Re-Hearing and that then Petition for Certiorari be granted.

Respectfully,

LEON AVERITT and
PERCY DONALD LIVINGSTON—
Petitioners
BY: GRADY HIGHT
BIDWELL ADAM and
FORREST B. JACKSON
Their Attorneys

BY: _____
Of Counsel

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CERTIFICATE

The undersigned certifies that the foregoing Petition for Re-Hearing is submitted pursuant to requirements of Rule 58, Paragraph 2, and is presented in good faith and not for delay, and the Petition is restricted to the grounds above specified by said Rule 58.

Further, that service of copy was had on the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, as required by the Rules of this Court, before the filing of said Petition.

This————day of November, 1963.

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Of Counsel